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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/144,851	09/01/1998	YUKIHISA KATO	KATO=15	5275

1444 7590 05/02/2002

BROWDY AND NEIMARK, P.L.L.C.
624 NINTH STREET, NW
SUITE 300
WASHINGTON, DC 20001-5303

EXAMINER

SHERRER, CURTIS EDWARD

ART UNIT	PAPER NUMBER
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1761

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DATE MAILED: 05/02/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action SummaryApplication No.
09/144,851

Applicant(s)

Kato

Examiner

Curtis E. Sherrer

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Apr 4, 2002
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-24 and 27-31 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-24 and 27-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) ☐ Other: _____

Part III DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 21-24, and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seike in view of Jackson (Wine Science, pp. 229 and 279-80) for the reasons set forth in the last Office Action.

Applicant has amended claim 21 to recite that the citric acid content is reduced "by from 50 to 100% by weight." The amount of the citric acid reduction is a result effective variable, i.e., the amount reduced will effect the pH and the flavor of the resultant juice and vinegar and therefore it would be obvious to those of ordinary skill in the art to optimize the amount of citric acid that is reduced.

3. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Seike in view of Jackson and in further view of Castillon et al (U.S. Pat. No. 5,415,775) for the reasons set forth in the last Office Action.

Response to Arguments

4. Applicant's arguments filed 04/12/02 have been fully considered but they are not persuasive.

5. Applicant argues, with respect to the teachings of the prior art, that Seike does not make the instant claims obvious. Specifically, they state that "addition of sodium citrate produces a vinegar with a bad flavor." The instant specification states that "[i]t is surely possible to add an alkali agent to 'moromi' so as to elevate the pH of the 'moromi', of which pH has been decreased due to the use of fruit juice, but because the addition of an alkali agent affects severely the flavor of the resulting fruit vinegar, it is impossible to produce fruit vinegar with natural flavor unique to flavorful acid citrus fruit" (Page 4, first full para.)

6. While the prior art adds sodium citrate, this would be considered a mild alkaline agent. Further, it is not clear which alkalis the specification refers to. Broadly, an alkali is a substance which gives alkaline aqueous solutions. Secondly, the specification refers to adding the alkali to a "moromi" but the prior art adds it at the juice stage. Therefore, the specification does not clearly show that the disclosed sodium citrate does in fact produce a vinegar with bad flavors. A more convincing argument could be made by present factual evidence in the form of a declaration or affidavit.

7. Applicants argue that Jackson teaches modifying juice pH with the same claimed calcium carbonate and this "has nothing to do with acetic acid fermentation, which is a step beyond ethanol fermentation." They also state that "Jackson is only concerned with producing ethanol." This is not correct. In the production of wine, flavor is of the utmost importance, just as it is with making vinegars.

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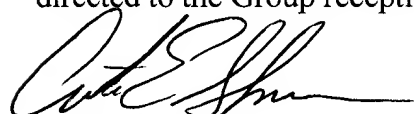
8. The pH of a juice affects many factors, such as shelf life, flavor and activity of microorganisms. The fact that applicant has recognized another advantage that would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Conclusion

9. No claim is allowed.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Sherrer whose telephone number is (703) 308-3847. The examiner can normally be reached on Tuesday through Friday from 6:30 to 4:30. The **fax phone number** for this Group is (703)-305-3602.

11. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.



Curtis E. Sherrer
Primary Examiner
April 26, 2002